

1 HB117  
2 78992-1  
3 By Representative Black (M)  
4 RFD: Judiciary  
5 First Read: 10-JAN-06  
6 PFD: 01/05/2006

SYNOPSIS: Existing law provides that prior convictions for driving under the influence could be considered for enhancement of the sentence of a person who is convicted of driving under the influence, however, the appellate courts of this state have ruled that only prior convictions rendered by Alabama courts could be considered.

This bill would provide that a prior conviction for driving under the influence of alcohol or drugs from this state, a municipality within this state, or another state or territory or a municipality of another state or territory would be considered by a court for enhancement of the sentence of a person who is convicted of driving under the influence.

Amendment 621 of the Constitution of Alabama of 1901 prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without

1           enactment by a 2/3 vote unless: it comes within one  
2           of a number of specified exceptions; it is approved  
3           by the affected entity; or the Legislature  
4           appropriates funds, or provides a local source of  
5           revenue, to the entity for the purpose.

6           The purpose or effect of this bill would be  
7           to require a new or increased expenditure of local  
8           funds within the meaning of Amendment 621. However,  
9           the bill does not require approval of a local  
10          governmental entity or enactment by a 2/3 vote to  
11          become effective because it comes within one of the  
12          specified exceptions contained in Amendment 621.

13  
14                           A BILL  
15                           TO BE ENTITLED  
16                           AN ACT

17  
18           To amend Section 32-5A-191, Code of Alabama 1975,  
19   relating to driving while under the influence of alcohol or a  
20   controlled substance; to provide that a prior conviction for  
21   driving under the influence of alcohol or drugs from this  
22   state, a municipality within this state, or another state or  
23   territory or a municipality of another state or territory  
24   could be considered by a court for enhancement of the sentence  
25   of a person who is convicted for driving under the influence;  
26   and in connection therewith would have as its purpose or  
27   effect the requirement of a new or increased expenditure of

1 local funds within the meaning of Amendment 621 of the  
2 Constitution of Alabama of 1901.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 32-5A-191, Code of Alabama 1975,  
5 is amended to read as follows:

6 "§32-5A-191.

7 "(a) A person shall not drive or be in actual  
8 physical control of any vehicle while:

9 "(1) There is 0.08 percent or more by weight of  
10 alcohol in his or her blood;

11 "(2) Under the influence of alcohol;

12 "(3) Under the influence of a controlled substance  
13 to a degree which renders him or her incapable of safely  
14 driving;

15 "(4) Under the combined influence of alcohol and a  
16 controlled substance to a degree which renders him or her  
17 incapable of safely driving; or

18 "(5) Under the influence of any substance which  
19 impairs the mental or physical faculties of such person to a  
20 degree which renders him or her incapable of safely driving.

21 "(b) A person who is under the age of 21 years shall  
22 not drive or be in actual physical control of any vehicle if  
23 there is .02 percentage or more by weight of alcohol in his or  
24 her blood. The Department of Public Safety shall suspend or  
25 revoke the driver's license of any person, including, but not  
26 limited to, a juvenile, child, or youthful offender, convicted  
27 or adjudicated of, or subjected to a finding of delinquency

1 based on this subsection. Notwithstanding the foregoing, upon  
2 the first violation of this subsection by a person whose blood  
3 alcohol level is between .02 and .08, the person's driver's  
4 license or driving privilege shall be suspended for a period  
5 of 30 days in lieu of any penalties provided in subsection (e)  
6 of this section and there shall be no disclosure, other than  
7 to courts, law enforcement agencies, and the person's  
8 employer, by any entity or person of any information,  
9 documents, or records relating to the person's arrest,  
10 conviction, or adjudication of or finding of delinquency based  
11 on this subsection.

12 "All persons, except as otherwise provided in this  
13 subsection for a first offense, including, but not limited  
14 to, a juvenile, child, or youthful offender, convicted or  
15 adjudicated of, or subjected to a finding of delinquency based  
16 on this subsection shall be fined pursuant to this section,  
17 notwithstanding any other law to the contrary, and the person  
18 shall also be required to attend and complete a DUI or  
19 substance abuse court referral program in accordance with  
20 subsection (i).

21 "(c) A school bus or day care driver shall not drive  
22 or be in actual physical control of any vehicle while in  
23 performance of his or her duties if there is greater than .02  
24 percentage by weight of alcohol in his or her blood. A person  
25 convicted pursuant to this subsection shall be subject to the  
26 penalties provided by this section except that on the first  
27 conviction the Director of Public Safety shall suspend the

1 driving privilege or driver's license for a period of one  
2 year.

3 "(d) The fact that any person charged with violating  
4 this section is or has been legally entitled to use alcohol or  
5 a controlled substance shall not constitute a defense against  
6 any charge of violating this section.

7 "(e) Upon first conviction, a person violating this  
8 section shall be punished by imprisonment in the county or  
9 municipal jail for not more than one year, or by fine of not  
10 less than six hundred dollars (\$600) nor more than two  
11 thousand one hundred dollars (\$2,100), or by both a fine and  
12 imprisonment. In addition, on a first conviction, the Director  
13 of Public Safety shall suspend the driving privilege or  
14 driver's license of the person convicted for a period of 90  
15 days.

16 "(f) On a second conviction within a five-year  
17 period, a person convicted of violating this section shall be  
18 punished by a fine of not less than one thousand one hundred  
19 dollars (\$1,100) nor more than five thousand one hundred  
20 dollars (\$5,100) and by imprisonment, which may include hard  
21 labor in the county or municipal jail for not more than one  
22 year. The sentence shall include a mandatory sentence, which  
23 is not subject to suspension or probation, of imprisonment in  
24 the county or municipal jail for not less than five days or  
25 community service for not less than 30 days. In addition the  
26 Director of Public Safety shall revoke the driving privileges

1 or driver's license of the person convicted for a period of  
2 one year.

3 "(g) On a third conviction, a person convicted of  
4 violating this section shall be punished by a fine of not less  
5 than two thousand one hundred dollars (\$2,100) nor more than  
6 ten thousand one hundred dollars (\$10,100) and by  
7 imprisonment, which may include hard labor, in the county or  
8 municipal jail for not less than 60 days nor more than one  
9 year, to include a minimum of 60 days which shall be served in  
10 the county or municipal jail and cannot be probated or  
11 suspended. In addition, the Director of Public Safety shall  
12 revoke the driving privilege or driver's license of the person  
13 convicted for a period of three years.

14 "(h) On a fourth or subsequent conviction, a person  
15 convicted of violating this section shall be guilty of a Class  
16 C felony and punished by a fine of not less than four thousand  
17 one hundred dollars (\$4,100) nor more than ten thousand one  
18 hundred dollars (\$10,100) and by imprisonment of not less than  
19 one year and one day nor more than 10 years. Any term of  
20 imprisonment may include hard labor for the county or state,  
21 and where imprisonment does not exceed three years confinement  
22 may be in the county jail. Where imprisonment does not exceed  
23 one year and one day, confinement shall be in the county jail.  
24 The minimum sentence shall include a term of imprisonment for  
25 at least one year and one day, provided, however, that there  
26 shall be a minimum mandatory sentence of 10 days which shall  
27 be served in the county jail. The remainder of the sentence

1 may be suspended or probated, but only if as a condition of  
2 probation the defendant enrolls and successfully completes a  
3 state certified chemical dependency program recommended by the  
4 court referral officer and approved by the sentencing court.  
5 Where probation is granted, the sentencing court may, in its  
6 discretion, and where monitoring equipment is available, place  
7 the defendant on house arrest under electronic surveillance  
8 during the probationary term. In addition to the other  
9 penalties authorized, the Director of Public Safety shall  
10 revoke the driving privilege or driver's license of the person  
11 convicted for a period of five years.

12 ~~"Any law to the contrary notwithstanding, the~~ The  
13 Alabama habitual felony offender law shall not apply to a  
14 conviction of a felony pursuant to this subsection, and a  
15 conviction of a felony pursuant to this subsection shall not  
16 be a felony conviction for purposes of the enhancement of  
17 punishment pursuant to Alabama's habitual felony offender law.

18 "(i) In addition to the penalties provided herein,  
19 any person convicted of violating this section shall be  
20 referred to the court referral officer for evaluation and  
21 referral to appropriate community resources. The defendant  
22 shall, at a minimum, be required to complete a DUI or  
23 substance abuse court referral program approved by the  
24 Administrative Office of Courts and operated in accordance  
25 with provisions of the Mandatory Treatment Act of 1990,  
26 Sections 12-23-1 to 12-23-19, inclusive. The Department of  
27 Public Safety shall not reissue a driver's license to a person



1 convicted under this section without receiving proof that the  
2 defendant has successfully completed the required program.

3 "(j) Neither reckless driving nor any other traffic  
4 infraction is a lesser included offense under a charge of  
5 driving under the influence of alcohol or of a controlled  
6 substance.

7 "(k) Except for fines collected for violations of  
8 this section charged pursuant to a municipal ordinance, fines  
9 collected for violations of this section shall be deposited to  
10 the State General Fund; however, beginning October 1, 1995, of  
11 any amount collected over two hundred fifty dollars (\$250) for  
12 a first conviction, over five hundred dollars (\$500) for a  
13 second conviction within five years, over one thousand dollars  
14 (\$1,000) for a third conviction within five years, and over  
15 two thousand dollars (\$2,000) for a fourth or subsequent  
16 conviction within five years, the first one hundred dollars  
17 (\$100) of that additional amount shall be deposited to the  
18 Alabama Chemical Testing Training and Equipment Trust Fund,  
19 after three percent of the one hundred dollars (\$100) is  
20 deducted for administrative costs, and beginning October 1,  
21 1997, and thereafter, the second one hundred dollars (\$100) of  
22 that additional amount shall be deposited in the Impaired  
23 Drivers Trust Fund after deducting five percent of the one  
24 hundred dollars (\$100) for administrative costs and the  
25 remainder of the funds shall be deposited to the State General  
26 Fund. Fines collected for violations of this section charged  
27 pursuant to a municipal ordinance where the total fine is paid

1 at one time shall be deposited as follows: The first three  
2 hundred fifty dollars (\$350) collected for a first conviction,  
3 the first six hundred dollars (\$600) collected for a second  
4 conviction within five years, the first one thousand one  
5 hundred dollars (\$1,100) collected for a third conviction, and  
6 the first two thousand one hundred dollars (\$2,100) collected  
7 for a fourth or subsequent conviction shall be deposited to  
8 the State Treasury with the first one hundred dollars (\$100)  
9 collected for each conviction credited to the Alabama Chemical  
10 Testing Training and Equipment Trust Fund and the second one  
11 hundred dollars (\$100) to the Impaired Drivers Trust Fund  
12 after deducting five percent of the one hundred dollars (\$100)  
13 for administrative costs and depositing this amount in the  
14 general fund of the municipality, and the balance credited to  
15 the State General Fund. Any amounts collected over these  
16 amounts shall be deposited as otherwise provided by law. Fines  
17 collected for violations of this section charged pursuant to a  
18 municipal ordinance, where the fine is paid on a partial or  
19 installment basis, shall be deposited as follows: The first  
20 two hundred dollars (\$200) of the fine collected for any  
21 conviction shall be deposited to the State Treasury with the  
22 first one hundred dollars (\$100) collected for any conviction  
23 credited to the Alabama Chemical Testing Training and  
24 Equipment Trust Fund and the second one hundred dollars (\$100)  
25 for any conviction credited to the Impaired Drivers Trust Fund  
26 after deducting five percent of the one hundred dollars (\$100)  
27 for administrative costs and depositing this amount in the

1 general fund of the municipality. The second three hundred  
2 dollars (\$300) of the fine collected for a first conviction,  
3 the second eight hundred dollars (\$800) collected for a second  
4 conviction, the second one thousand eight hundred dollars  
5 (\$1,800) collected for a third conviction, and the second  
6 three thousand eight hundred dollars (\$3,800) collected for a  
7 fourth conviction shall be divided with 50 percent of the  
8 funds collected to be deposited to the State Treasury to be  
9 credited to the State General Fund and 50 percent deposited as  
10 otherwise provided by law for municipal ordinance violations.  
11 Any amounts collected over these amounts shall be deposited as  
12 otherwise provided by law for municipal ordinance violations.  
13 Notwithstanding any provision of law to the contrary, 90  
14 percent of any fine assessed and collected for any DUI offense  
15 charged by municipal ordinance violation in district or  
16 circuit court shall be computed only on the amount assessed  
17 over the minimum fine authorized, and upon collection shall be  
18 distributed to the municipal general fund with the remaining  
19 10 percent distributed to the State General Fund.

20 "(l) A person who has been arrested for violating  
21 this section shall not be released from jail under bond or  
22 otherwise, until there is less than the same percent by weight  
23 of alcohol in his or her blood as specified in subsection  
24 (a)(1) or, in the case of a person who is under the age of 21  
25 years, subsection (b) hereof.

26 "(m) Upon verification that a defendant arrested  
27 pursuant to this section is currently on probation from

1 another court of this state as a result of a conviction for  
2 any criminal offense, the prosecutor shall provide written or  
3 oral notification of the defendant's subsequent arrest and  
4 pending prosecution to the court in which the prior conviction  
5 occurred.

6 "(n) When any person over the age of 21 years is  
7 convicted pursuant to this section and a child under the age  
8 of 14 years was present in the vehicle at the time of the  
9 offense, the defendant shall be sentenced to double the  
10 minimum punishment that the person would have received if the  
11 child had not been present in the motor vehicle.

12 "(o) A prior conviction for driving under the  
13 influence of alcohol or drugs from this state, a municipality  
14 within this state, or another state or territory or a  
15 municipality of another state or territory shall be considered  
16 by a court for imposing a sentence pursuant to this section.

17 "~~(o)~~ (p) Any person convicted of driving under the  
18 influence of alcohol, or a controlled substance, or both, or  
19 any substance which impairs the mental or physical faculties  
20 in violation of this section, a municipal ordinance adopting  
21 this section, or a similar law from another state or territory  
22 or a municipality of another state or territory more than once  
23 in a five-year period shall have his or her motor vehicle  
24 registration for all vehicles owned by the repeat offender  
25 suspended by the Alabama Department of Revenue for the  
26 duration of the offender's driver's license suspension period,  
27 unless such action would impose an undue hardship to any

1 individual, not including the repeat offender, who is  
2 completely dependent on the motor vehicle for the necessities  
3 of life, including any family member of the repeat offender  
4 and any co-owner of the vehicle."

5 Section 2. Although this bill would have as its  
6 purpose or effect the requirement of a new or increased  
7 expenditure of local funds, the bill is excluded from further  
8 requirements and application under Amendment 621 because the  
9 bill defines a new crime or amends the definition of an  
10 existing crime.

11 Section 3. This act shall become effective on the  
12 first day of the third month following its passage and  
13 approval by the Governor, or its otherwise becoming law.